

REMARKS

A. Status of the Application

- Claims 13 to 37 are pending in the application, of which claims 13, 24 and 31 are independent claims.
- Claims 23 and 37 are amended.

Accordingly, entry of the amended claims is respectfully requested. Applicants have amended the claims to recite particular embodiments that Applicants, in their business judgment, have determined to be commercially desirable at this time. The amended claims have not been submitted for any reasons relating to patentability, such as to overcome any of the Office Action's rejections.

Applicants intend to pursue the subject matter of the previously cancelled claims, in one or more continuing applications.

B. Preliminary Matter

Applicants' Attorney Docket Number was inadvertently listed as "04-6184." The correct docket number is "03-6184". Applicants kindly request a correction of the docket number.

C. Claim Objections

On page 2, the Office Action objected to claims 26 to 30 and 33 to 36 as allegedly improper because "a multiple dependent claim cannot depend from any other multiple dependent claim."

Claims 26 to 30 and 33 to 36, however, are not multiple dependent claims. But rather, they are dependent claims which reference a preceding claim. A claim which makes reference to a preceding claim in order to define a limitation is an acceptable claim construction which should not necessarily be rejected as improper or confusing. *See* MPEP § 2173.05(f). Accordingly, Applicants respectfully request that the claim objections be withdrawn.

D. Claim Rejections Under 35 U.S.C. §112

On page 2, the Office Action rejected claims 23 and 37 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter. Claims 23 and 37 have been amended.

E. Claim Rejections Under 35 U.S.C. §103(a)

On page 3, the Office Action rejected claims 13, 14, 16 to 20, 23, 24, 31 and 37 under 35 U.S.C. §103(a) as being unpatentable over U.S. 6,195,647 ("Martyn") in view of U.S. Patent Publication 20040158519 ("Lutnick"). On page 9, the Office Action rejected claims 15, 21, 22, 25 and 32 under 35 U.S.C. §103(a) over Martyn in view of Lutnick and U.S. 20060069635 ("Ram"). However, no *prima facie* case of obviousness has been proven for any of the claims.

The Office Action concedes in numerous sections that "Martyn et al. does not disclose" all of the limitations recited in Applicant's invention. *See, e.g.*, pages 4, 9-11. Instead, the Office Action contends that the Lutnick reference supplies the deficiencies. However, the Office Action improperly applied the Lutnick reference to this case. As stated in 35 U.S.C. § 103(c)(1):

Subject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, ... subject to an obligation of assignment to the same person (emphasis added).

Both Applicants' invention and the Lutnick reference were subject to an obligation of assignment to the same entity, namely eSpeed, Inc., at the time of the claimed invention. As such, the Lutnick reference does not preclude patentability under section 103. Therefore, the Office Action fails to make a *prima facie* case of obviousness for any of the claims.

F. General Comments on Dependent Claims

Since each of the dependent claims depends from a base claim that is believed to be in condition for allowance, Applicants believe that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. However, Applicants do not necessarily concur with the interpretation of the dependent claims as set forth in the Office Action, nor do Applicants concur that the basis for the rejection of any of the dependent claims is proper. Therefore, Applicants reserve the right to specifically address the patentability of the dependent claims in the future, if deemed necessary.

G. Conclusion

In general, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for

patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In view of the foregoing amendments and remarks, Applicants respectfully submit that the application is in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Applicants' undersigned attorney can be reached at the address shown below. All telephone calls should be directed to the undersigned at (857) 413-2056.

Respectfully submitted,

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